

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Randal Scot Gambrell, Jr. #83125, ) C/A No. 6:15-3995-TMC-JDA  
)  
Plaintiff, )  
)  
vs. ) **REPORT AND RECOMMENDATION**  
)  
)  
Director of Laurens County Jail; )  
Laurens County Sheriff's Department, )  
)  
Defendants. )  
\_\_\_\_\_ )

Randal Scot Gambrell, Jr. (“Plaintiff”), proceeding pro se, brings this civil action pursuant to 42 U.S.C. § 1983. Plaintiff is currently detained in the Laurens County Detention Center (“LCDC”), and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

## BACKGROUND

Plaintiff contends that his case concerns his wrongful arrest and the failure to indict him in a timely manner. [Doc. 1.] He seeks to bring this action on behalf of himself and his wife, Brittany A. Gambrell.<sup>1</sup> [*Id.*] Specifically, he alleges the following facts. He is wrongfully accused of the following state crimes, and there is a lack of evidence: attempted armed robbery; burglary first degree; and burglary second degree. [*Id.*] He was denied his right to a preliminary hearing and denied bond for seven months. [*Id.*] He did obtain a bond at some point, but he could not afford to satisfy it. [*Id.*] In addition to himself, Plaintiff's children and wife have suffered from his being imprisoned. [*Id.*]

<sup>1</sup>The Complaint has an unsigned attachment written, in a different handwriting, that purports to be written by Plaintiff's wife. [Doc. 1-1.] The document alleges that Plaintiff was arrested in April 2014, and he was arrested on another occasion. [*Id.*] Both arrests were wrongful, and no evidence has been produced. [*Id.*]

Based on these facts, Plaintiff alleges his constitutional rights have been violated, such as due process, right to be free from unreasonable seizure, and right to a speedy trial. [/*d.*] He also claims false arrest and slander. [/*d.*] He seeks damages for himself and his family, and he requests to be acquitted of the criminal charges. [/*d.*]

This Court takes judicial notice that Plaintiff was arrested on January 6, 2015, for burglary first degree and on January 16, 2015, for burglary second degree. See Laurens County 8th Judicial Circuit Public Index, <http://publicindex.sccourts.org/Laurens/PublicIndex/PISearch.aspx>, (enter “Randal Gambrell” and “search,” click on “2015A3020100009,” “2015A3010100014,” and click “Charges”) (last visited October 21, 2015); see also *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (courts “may properly take judicial notice of matters of public record.”); *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) (“We note that ‘the most frequent use of judicial notice is in noticing the content of court records.’”). And, on April 17, 2014, Plaintiff was arrested for attempted armed robbery, and the charge was indicted on July 25, 2014. See Laurens County 8th Judicial Circuit Public Index, <http://publicindex.sccourts.org/Laurens/PublicIndex/PISearch.aspx>, (enter “Randal Gambrell” and “search,” click on “2014A3010100506,” and click “Charges”) (last visited October 21, 2015).

### **STANDARD OF REVIEW**

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(d) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the

District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, Plaintiff is a prisoner under the definition in 28 U.S.C. § 1915A(c), and “seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). Thus, even if Plaintiff had prepaid the full filing fee, this Court is charged with screening Plaintiff’s lawsuit to identify cognizable claims or to dismiss the Complaint if (1) it is frivolous, malicious, or fails to state a claim upon which relief may be granted or (2) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A.

As a pro se litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

### **DISCUSSION**

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 “creates a private right of action to vindicate violations of ‘rights, privileges, or immunities secured by the Constitution and laws’ of the United States.” *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

The Complaint should be dismissed based on several reasons including failure to state a claim on which relief may be granted. Although the Court must liberally construe the pro se Complaint and Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the Complaint, the Complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)); see also *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (explaining that a plaintiff may proceed into the litigation process only when his complaint is justified by both law and fact); cf. *Skinner v. Switzer*, 131 S. Ct. 1289 (2011) (holding that plaintiff need not pin his claim for relief to precise legal theory). “A claim has ‘facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the

defendant is liable for the misconduct alleged.” *Owens v. Baltimore City State’s Attorneys Office*, 767 F.3d 379, 388 (4th Cir. 2014), *cert. denied* 135 S. Ct. 1893 (2015).

“The constitutional right to be free from unreasonable searches and seizures is well settled.” *Merchant v. Bauer*, 677 F.3d 656, 662 (4th Cir. 2012). However, an arrest is reasonable if supported by probable cause. *Id.* A grand jury indictment is affirmative evidence of probable cause sufficient to defeat claims for malicious prosecution and false arrest under § 1983. *See Durham v. Horner*, 690 F.3d 183, 189 (4th Cir. 2012); *Provet v. South Carolina*, Civil Action No. 6:07-1094-GRA-WMC, 2007 WL 1847849, at \*5 (D.S.C. June 25, 2007). Because Plaintiff has been indicted on the state charges of attempted armed robbery, burglary first degree, and burglary second degree, the false arrest claim based on those charges fails to state a plausible claim.

Although a plaintiff may bring a malicious prosecution claim under the Fourth Amendment, such a claim may be brought when a plaintiff can show that the criminal proceedings terminated in his favor. *See Evans v. Chalmers*, 703 F.3d 636, 647 (2012). Here, Plaintiff does not allege favorable termination on the criminal charges so his Fourth Amendment malicious claim is premature. And, thus, he fails to state a claim.

Plaintiff’s allegation of “slander”<sup>2</sup> fails to state a plausible claim in this Court. An alleged act of defamation of character or injury to reputation is not actionable under 42 U.S.C. § 1983. *Paul v. Davis*, 424 U.S. 693, 697–710 & nn. 3–4 (1976). Civil rights

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<sup>2</sup>Slander usually refers to acts of defamation that are “expressed in a transitory form, esp. speech,” while libel refers to acts of defamation that are expressed “in a fixed medium, esp. writing but also a picture, sign, or electronic broadcast.” *Black’s Law Dictionary* (9th ed. 2009). Defamation is the “act of harming the reputation of another by making a false statement to a third person.” *Id.*

statutes, such as 42 U.S.C. § 1983, do not impose liability for violations of duties of care arising under a state's tort law. *DeShaney v. Winnebago Cnty. Dep't of Soc. Serv.*, 489 U.S. 189, 200–03 (1989).

Further, Plaintiff's claims seeking money damages against the Laurens County Sheriff's Department are barred by Eleventh Amendment immunity. In South Carolina, a sheriff's department is an agency of the state, not a department under the control of the county. *Gulledge v. Smart*, 691 F. Supp. 947, 954-55 (D.S.C. 1988) (discussing sheriff as agent and alter ego of state and that deputy sheriffs act as the sheriff's agent), *aff'd*, 878 F.2d 379 (4th Cir. 1989); *Carroll v. Greenville Cnty. Sheriff's Dep't*, 871 F. Supp. 844, 846 (D.S.C. 1994) (suit against the sheriff's office is suit against the state). As an agency of the state, the Laurens County Sheriff's Department is immune from suit under the Eleventh Amendment to the United States Constitution which divests this court of jurisdiction to entertain a suit brought against the State of South Carolina or its integral parts. *Stewart v. Beaufort Cnty.*, 481 F. Supp. 2d 483, 492 (D.S.C. 2007) (“[A] federal court lacks jurisdiction to hear a cause of action against a South Carolina Sheriff's Department, as such a suit is barred by state immunity.”) Thus, because this Court is prohibited from entertain Plaintiff's suit for damages against the Laurens County Sheriff's Department, that defendant should be dismissed.

This action is also subject to dismissal because Plaintiff lacks standing to bring this lawsuit on behalf of his wife and family. See *Hummer v. Dalton*, 657 F.2d 621, 625–26 (4th Cir. 1981) (a prisoner cannot act as a "knight-errant" for others); *Oxendine v. Williams*, 509 F.2d 1405, 1407 & n.\* (4th Cir. 1975) (a pro se prisoner unassisted by counsel cannot be an advocate for others in a class action); *Inmates v. Owens*, 561 F.2d 560, 562–63 (4th

Cir. 1977) (one pro se inmate does not have standing to sue on behalf of another inmate); see also *Myers v. Loudon Cnty. Pub. Sch.*, 418 F.3d 395, 401 (4th Cir. 2005) (finding that a pro se person's right to litigate for *oneself* does not create a similar right to litigate on behalf of others).

And, because Plaintiff seeks to have several of his pending state criminal charges dismissed, or acquitted, this action should be dismissed based on *Younger* abstention. Plaintiff seeks interference by this Court with the pending state criminal prosecution against him. However, because a federal court may not award injunctive relief that would affect pending state criminal proceedings absent extraordinary circumstances, this Court should abstain from interfering with it.

In *Younger v. Harris*, the Supreme Court held that a federal court should not equitably interfere with state criminal proceedings "except in the most narrow and extraordinary of circumstances." *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996). The *Younger* Court noted that courts of equity should not act unless the moving party has no adequate remedy at law and will suffer irreparable injury if denied equitable relief. *Younger v. Harris*, 401 U.S. 37, 43-44 (1971); see also *Sprint Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013) (explaining the circumstances when *Younger* abstention is appropriate).

From *Younger* and its progeny, the Court of Appeals for the Fourth Circuit has culled the following test to determine when abstention is appropriate: "(1) there are ongoing state judicial proceedings; (2) the proceedings implicate important state interests; and (3) there is an adequate opportunity to raise federal claims in the state proceedings." *Martin Marietta Corp. v. Maryland Comm'n on Human Relations*, 38 F.3d 1392, 1396 (4th Cir. 1994) (citing *Middlesex County Ethics Comm'n v. Garden State Bar Ass'n*, 457 U.S. 423,

432 (1982)). Here, Plaintiff is involved in ongoing state criminal proceedings. The second criterion has been addressed by the Supreme Court: “[T]he States’ interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court considering equitable types of relief.” *Kelly v. Robinson*, 479 U.S. 36, 49 (1986). The Court also decided the third criterion in noting “that ordinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights.” *Gilliam v. Foster*, 75 F.3d 881, 903 (4th Cir. 1996) (quoting *Kugler v. Helfant*, 421 U.S. 117, 124 (1975)). This Court finds that Plaintiff should be able to raise his federal constitutional rights, including speedy trial issues and lack of evidence, in the state proceedings. Therefore, to the extent Plaintiff seeks to enjoin the pending state criminal proceedings against him, this Court should abstain from hearing this action.

### **RECOMMENDATION**

It is recommended that the District Court dismiss this action without prejudice and without issuance and service of process. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972); and 28 U.S.C. § 1915A (as soon as possible after docketing, district courts should review prisoner cases to determine whether they are subject to summary dismissal). **Plaintiff’s attention is directed to the important notice on the next page.**

October 22, 2015  
Greenville, South Carolina

s/Jacquelyn D. Austin  
United States Magistrate Judge



### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
300 East Washington Street, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).